

STATE OF MICHIGAN  
COURT OF APPEALS

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LINDA R. ATKINS,

Plaintiff-Appellee,

v

MICHIGAN PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT SYSTEM,

Defendant-Appellant.

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UNPUBLISHED

April 22, 2008

No. 276438

Oakland Circuit Court

LC No. 2006-076469-AA

Before: Jansen, P.J., and Donofrio and Davis, JJ.

PER CURIAM.

Defendant appeals by leave granted an order reversing the administrative decision by the Public School Employees Retirement Board (the Board) that plaintiff was not entitled to receive retirement benefits. We affirm.

Plaintiff was born on August 17, 1942. Between July 1, 1996, and June 30, 2003, she accumulated 6.08 years of credited service working for Oakland Community College (OCC) and the Garden City Public Schools (GCPS). In April 2003, she was told by her supervisor that her position would be eliminated at the end of the year<sup>1</sup> for budget reasons. Later that month, she inquired into retirement benefits. The Office of Retirement Services (ORS) informed plaintiff that she would be eligible for a pension under the “60 with 5” option. In order to be eligible, plaintiff had to be at least 60 years old at the time of her retirement,<sup>2</sup> MCL 38.1381(1)(b), and have “received credited service in each of the 5 school fiscal years immediately preceding the retirement allowance effective date,” MCL 38.1343b(b). Plaintiff’s last day of actual work was June 11, 2003; the school year ended June 30, 2003. Plaintiff did not immediately apply for retirement benefits, because she hoped to be recalled to work. She was not, however, recalled by GCPS or by any other employer.

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<sup>1</sup> Presumably a reference to the school fiscal year, which runs from July 1 of one calendar-year to June 30 of the following calendar-year. MCL 380.1133.

<sup>2</sup> There is no dispute that plaintiff met this requirement.

Plaintiff applied for retirement benefits on June 30, 2004, under the “60 with 5” option. The application form explicitly stated that “your retirement must immediately follow your termination of service” for this option. The form provided blanks for “the date of my termination of employment” and a date to “request my retirement pension to be effective.” Plaintiff entered August 1, 2004, in each of these blanks. Plaintiff also answered affirmatively a question on the form asking whether there had been “any periods when you were not on the regular employment payroll;” she indicated that this occurred in the 2003 school year, and stated as the reason “education cuts, state cuts, = job cut.” The form was received by the ORS on July 12, 2004. According to plaintiff’s testimony, she had been told by her supervisor that she needed to specify August 1, 2004, as the date of her termination, even though it is undisputed that plaintiff did not actually work after June 30, 2003.

Plaintiff subsequently<sup>3</sup> sent a letter to GCPS stating that, pursuant to the request of her supervisor, her intent was to retire, and she had “sent paper work, and received confirmation, to the State indicating my retirement date as of August 1, 2004.” On August 10, 2004, GCPS acknowledged plaintiff’s resignation and stated that her “resignation will be effective August 1, 2004.” On December 2, 2004, the ORS informed plaintiff that her request for retirement benefits was denied because she failed to work in each of the five school years immediately preceding her retirement – specifically, the 2004 or 2005 school fiscal years. Plaintiff contested this decision, arguing that she had actually been eligible to receive the benefits in 2003, but she had waited to apply because she had been hoping to be rehired. The Board eventually upheld the ORS decision after an administrative hearing held December 8, 2005.

Plaintiff appealed the Board’s decision to the circuit court, where both parties made essentially the same arguments that they had made in the administrative proceedings. The circuit court found that plaintiff’s August 1, 2004 termination date was illogical, because it was undisputed that GCPS had terminated plaintiff’s employment as of June 30, 2003, and it could not thereafter claim that she had been entitled to go back to work in August 2003. The court found that defendant’s records were not themselves erroneous, but that through no fault of its own, the Board had relied on arbitrary and capricious information provided to it by GCPS regarding plaintiff’s termination date. Therefore, the Board’s decision was not based on substantial, competent, and material evidence. The circuit court determined that correction of plaintiff’s termination date was warranted under MCL 38.1345,<sup>4</sup> and that plaintiff was eligible for retirement benefits, effective August 1, 2004. Defendant now appeals.

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<sup>3</sup> A date stamp on this letter indicates that ORS received it on February 3, 2005, but this clearly refers to the date it was faxed to ORS by GCPS. Apparently, plaintiff actually sent the letter to GCPS at some point in August of 2004.

<sup>4</sup> The statute provides:

If a change or error in the records of the retirement system results in a retirant, retirement allowance beneficiary, or refund beneficiary receiving from the retirement system more or less than the retirant, retirement allowance beneficiary, or refund beneficiary would have been entitled to receive had the records been correct, the retirement system shall correct the error, and as far as

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Review of an administrative agency's decision is limited. The circuit court's review of an administrative decision is limited to determining whether the decision was (1) contrary to law; (2) supported by competent, material, and substantial evidence on the whole record; (3) not arbitrary, capricious, or a clear abuse of discretion; or (4) otherwise affected by a substantial and material legal error. *Vanzandt v State Employees' Retirement Sys*, 266 Mich App 579, 583-585; 701 NW2d 214 (2005). Our review of the circuit court is only to determine whether the court applied correct legal principles, or whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings. *Id.* We only reverse the circuit court's decision if "left with a definite and firm conviction that a mistake was made." *Id.*, 585.

We do not believe the trial court clearly made a mistake. The Board's denial of retirement benefits was based on its conclusion that plaintiff did not "receive[] credited service in each of the 5 school years immediately preceding the retirement allowance effective date." MCL 38.1343b(b). The critical question is when "the retirement allowance effective date" was. The term "retirement allowance effective date" is not defined<sup>5</sup> in any Michigan statute that we are aware of. However, we find that the statutes do provide a sufficiently clear explanation of the term, and based on that explanation of the term's meaning, we conclude that the trial court made the correct decision.

We find the meaning of "retirement allowance effective date" MCL 38.1383(1) states:

Each retirement allowance shall date from the first of the month following the month in which the applicant satisfies the age and service requirements of this act and terminated reporting unit service, but not more than 12 months before the month in which the application was filed with the retirement system, if the applicant satisfies the legal requirements for the retirement allowance at the time the application is filed.

The term "terminated reporting unit service" is significant. The "reporting unit" is the applicant's employer, MCL 38.1307(3), and "service" refers to credited employment service. MCL 38.1308(1). Taken together, "terminated reporting unit service" unambiguously refers to the cessation of credited service work – in other words, when the applicant stopped working for the employer. In the instant case, that date would be, at the latest, June 30, 2003.<sup>6</sup> Furthermore,

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practicable, shall adjust the payment to provide an actuarial equivalent of the benefit to which the retirant, retirement allowance beneficiary, or refund beneficiary was entitled. An adjustment in benefits shall not be made for an error totaling \$10.00 or less annually and the amount shall be debited or credited to the reserve for employer contributions.

<sup>5</sup> However, "retirement allowance" is defined in relevant part as "a payment . . . provided for in this act to which a retirant, retirement allowance beneficiary, or refund beneficiary is entitled." MCL 38.1307(5).

<sup>6</sup> Defendant contends that there is no evidence plaintiff was terminated. However, it is not disputed that the last actual day plaintiff worked was June 11, 2003, and at some point thereafter, when plaintiff inquired about her job with the GCPS personnel department, she was informed that she had no job. Plaintiff received no wages or service credit after June of 2003, and this was (continued...)

on that date, plaintiff satisfied the age requirements (she was aged 60 at the time), and she satisfied the service requirements (she had accumulated 6.08 years of continuous service through and immediately preceding that time). Therefore, in June 2003, plaintiff “satisfie[d] the age and service requirements of this act” and she “terminated reporting unit service.”

As a result, the first part of MCL 38.1383(1) provides that the date of plaintiff’s retirement allowance would be the first day of the next month, or July 1, 2003, subject to the 12-month limitation on backdating from the date of the application. “The month in which the application was filed with the retirement system” was, at the latest, July 2004. Therefore, again, plaintiff’s retirement allowance could be dated as early as July 2003. The only final requirement is that plaintiff “satisfie[d] the legal requirements for the retirement allowance at the time the application [was] filed.” Plaintiff had not worked for more than a whole school fiscal year at the time the application was filed, but the “legal requirements for the retirement allowance” under the “60 with 5” option refer to the effective date of the retirement allowance *itself*. And, as discussed, plaintiff did meet those legal requirements at the time the application was filed.

Plaintiff’s “retirement allowance effective date” under the relevant statutes was July 1, 2003, irrespective of when plaintiff desired her benefits to actually commence payment. The date of August 1, 2004, that plaintiff wrote on her retirement application as the “date of my termination” was clearly wrong, as GCPS would have known from its own actions. Moreover, given plaintiff’s additional indication on the application that she did not work in 2003 because of “education cuts, state cuts,= job cuts,” that date would have been facially dubious, particularly given that the school fiscal year *begins* precisely one month *before* the date plaintiff selected. We do not find it inappropriate for the Board to have initially relied on the August 1, 2004, date provided to it by GCPS. However, we agree with the trial court that GCPS erroneously provided that date, particularly given its own actions in the matter, and that because the Board was made aware of the true facts in this case, its decision was not based on competent, material, substantial evidence on the whole record.<sup>7</sup>

Affirmed.

/s/ Kathleen Jansen  
/s/ Pat M. Donofrio  
/s/ Alton T. Davis

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not by her own choice or due to her own actions, but rather was imposed on her by GCPS.

<sup>7</sup> Plaintiff raises on appeal, and raised below, an alternative argument in equity. Like the trial court, we need not reach it. However, we do observe that a “mistake of law is usually not a ground for equitable relief absent inequitable conduct,” *Bomarko, Inc v Rapistan Corp*, 207 Mich App 649, 652; 525 NW2d 518 (1994), which here is at least arguable given that GCPS was responsible for the end of plaintiff’s employment and for reporting the date thereof.